

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**JULIE J. SAHADI**

Claimant

VS.

**SCOTCH FABRIC CARE SERVICES**

Respondent

AND

**NATIONWIDE MUTUAL INSURANCE COMPANY**

Insurance Carrier

Docket No. 1,031,882

**ORDER**

Claimant appealed the March 20, 2007, preliminary hearing Order entered by Administrative Law Judge Brad E. Avery. Frank D. Taff of Topeka, Kansas, appeared for claimant. John F. Carpinelli of Topeka, Kansas, appeared for respondent and its insurance carrier.

The record on this appeal is the same record as that considered by Judge Avery and includes the transcript of the December 29, 2006, Preliminary Hearing with Claimant's Exhibits 1 through 3; the transcript of the March 19, 2007, Preliminary Hearing with Claimant's Exhibit 1 and Respondent's Exhibit A; the transcript of the January 29, 2007, deposition of Imogene Cote with Exhibit 1; the transcript of the January 29, 2007, deposition of Deborah Ritt with Exhibit 2; the transcript of the February 13, 2007, deposition of Marlene Showalter with Exhibits 1 through 8, and the pleadings contained in the administrative file.

**STATEMENT OF THE CASE**

Claimant requests workers compensation benefits for a right shoulder injury she allegedly sustained at work for respondent in August 2006 while lifting and hanging band uniforms.

In the March 20, 2007, Order, Judge Avery found claimant failed to prove her right shoulder injury arose out of and in the course of her employment. The Judge also determined claimant failed to provide respondent with timely notice of her alleged accident

or injury. Consequently, the Judge denied claimant's request for preliminary hearing benefits. And claimant has appealed that decision.

**ISSUES**

1. Did claimant prove she injured her right shoulder in an accident that arose out of and in the course of her employment with respondent?
2. Did claimant prove she provided respondent with timely notice of her accident or injury?

**PRINCIPLES OF LAW**

The Workers Compensation Act places the burden of proof upon the injured worker to establish the right to an award of compensation and to prove the conditions on which that right depends.<sup>1</sup> "Burden of proof" means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."<sup>2</sup>

An injured worker must prove his or her injury was caused by an "accident arising out of and in the course of employment."<sup>3</sup> The phrase "arising out of" employment requires some causal connection between the injury and the employment.<sup>4</sup>

But proof of a work-related accident is not enough. The injured worker must also prove the employer received notice of the accident within 10 days of its occurrence. But that 10-day period is extended to 75 days where there is "just cause."<sup>5</sup>

**FINDINGS OF FACT**

After reviewing the record compiled to date and considering the parties' arguments, the undersigned Board Member finds:

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<sup>1</sup> K.S.A. 2006 Supp. 44-501(a).

<sup>2</sup> K.S.A. 2006 Supp. 44-508(g).

<sup>3</sup> K.S.A. 2006 Supp. 44-501(a).

<sup>4</sup> *Pinkston v. Rice Motor Co.*, 180 Kan. 295, 303 P.2d 197 (1956).

<sup>5</sup> K.S.A. 44-520.

In April 2006, claimant began working for respondent in a dry cleaning and laundry facility. During the summer of 2006, claimant began experiencing right shoulder symptoms. She first noticed these symptoms in the morning on the day after she loaded band uniforms, which were individually hung on hangers, into a delivery van.

She initially thought she injured her shoulder on July 15, 2006, and that she sought medical treatment for that injury at the Shawnee County Health Agency within two or three days (or maybe a week) of the incident. But those dates are inconsistent with the medical records from the health agency, which show claimant first sought medical treatment for right shoulder symptoms on August 31, 2006. The July 15, 2006, accident date was also inconsistent with respondent's records that indicated band uniforms would not have been loaded or delivered on that date. She also initially testified she did not recall the color of the band uniforms. But later, she testified she thought the uniforms may have been blue and white and, possibly, the band uniforms of Washburn Rural High School. Finally, however, she testified she does not really remember the color of the uniforms.

Claimant contends she notified the plant manager, Greg Weiter, that her right shoulder was hurting the day after she had loaded the band uniforms. She also testified that approximately a week later (or maybe only one or two days later) she told Mr. Weiter that her shoulder was hurting from lifting band uniforms. Mr. Weiter denies these conversations occurred. Claimant also indicated that she was the only worker hanging the band uniforms in the delivery van. Marlene Showalter, respondent's general manager, contradicts that testimony as Ms. Showalter testified band uniforms are never loaded by only one person.

Although claimant was unsure of the date when her shoulder symptoms began, she did tell two co-workers her shoulder hurt. According to co-worker Deborah Ritt, sometime during the summer of 2006 claimant said her shoulder hurt, but did not say why. Likewise, co-worker Imogene Cote testified that sometime during the summer of 2006 claimant complained of her shoulder hurting from hanging up clothes on hangers.

Claimant worked for respondent through approximately August 23, 2006, when she and a co-worker were fired for arguing.

The record contains no medical opinion that links claimant's shoulder injury to a work activity at respondent's facility.

### **ANALYSIS**

Claimant is a poor historian. She is unsure when she began experiencing right shoulder symptoms and, therefore, is uncertain when she may have loaded the band uniforms in the delivery van. As July 15, 2006, does not appear to be the accident date,

claimant now argues August 14, 2006, was more likely the accident date. On August 14, 2006, however, no blue and white band uniforms were either loaded into a delivery van or delivered. And if August 14, 2006, is the accident date, claimant erred regarding the date she first sought medical treatment.

The mechanism of claimant's injury is somewhat murky. There is no medical opinion to relate claimant's right shoulder injury to her work. Moreover, according to respondent's management, band uniforms are never loaded by only one individual.

And finally, the date claimant allegedly notified respondent of her right shoulder injury is likewise murky. Moreover, respondent's plant manager specifically denies he was told of claimant's right shoulder problem as claimant alleges.

When considering the record as a whole, the undersigned finds claimant has failed to prove she injured her right shoulder at work and, likewise, failed to prove she provided respondent with timely notice of that accident or injury.

#### **CONCLUSION**

Claimant failed to prove she injured her right shoulder in an accident at work that arose out of and in the course of employment. She also failed to prove she notified respondent of the alleged accident or right shoulder injury within 10 days of the alleged accident. Finally, she failed to prove the 10-day notice period should be increased to 75 days. Consequently, claimant's request for preliminary hearing benefits should be denied.

#### **DECISION**

**WHEREFORE**, the March 20, 2007, Order entered by Judge Avery is affirmed.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.<sup>6</sup> Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2006 Supp. 44-551(i)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

**IT IS SO ORDERED.**

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<sup>6</sup> K.S.A. 44-534a.

Dated this \_\_\_\_ day of June, 2007.

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BOARD MEMBER

c: Frank D. Taff, Attorney for Claimant  
John F. Carpinelli, Attorney for Respondent and its Insurance Carrier  
Brad E. Avery, Administrative Law Judge